

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6232 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

BHARATIBEN W/O RAMKRIPAL @ CHOOTU, RAMDHARI KUSHWAH

Versus

STATE OF GUJARAT

Appearance:

MR JS RATHOD for Petitioner

GOVERNMENT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 23/11/1999

ORAL JUDGEMENT

The petitioner was detained under the Gujarat Prevention of Anti-social Activities Act, 1985 (PASA for short) by virtue of an order passed by Commissioner of Police, Ahmedabad on 17.2.99.

2. The Detaining Authority in the grounds of detention recorded a subjective satisfaction about the petitioner being the bootlegger, about his indulging into such activities which disrupts the public order and about the detention under PASA being the only remedy available

as other less drastic remedies are not feasible.

3. The petitioner has approached this Court with a petition under Article 226 of the Constitution of India assailing the order of detention on various grounds, one of which being that the Detaining Authority has passed the order without application of mind in the sense that it has not considered the availability of recourse to Section 437(5) of the Code of Criminal Procedure.

4. Mr.J.S.Rathod, Learned Advocate appearing for the petitioner has restricted his arguments to this point alone and submitted that the authority ought to have considered the available alternative less drastic remedy/recourse to cancellation of bail granted by the Court of Law to the petitioner earlier. The Detaining Authority was well aware about the fact that the petitioner has been bailed out in all the offences and therefore ought to have considered this alternative remedy which is less drastic in nature, having not considering this, the Detaining Authority has fallen in an error and therefore the order may be set aside by allowing the petition.

5. Mr.Joshi, Ld. AGP tried to oppose this application and justified the detention order by submitting that the Detaining Authority has recorded subjective satisfaction taken into consideration all the relevant aspects. Therefore the Court may not interfere with the order and dismiss the petition.

6. If the rival side contentions are considered in light of the detention order and the ground of detention produced on record, it is clear that the detaining authority has not taken into consideration the availability less drastic remedy in the nature of getting the bail of the petitioner cancelled. The Authority could have considered this aspect of resorting to that remedy before coming to a subjective satisfaction that detention under PASA Act was the only available remedy. This reflects non-application of mind by the Detaining Authority. The order therefore would be vitiated. In this regard, a decision of the Division Bench of this Court in LPA No. 1056 of 1999 in SCA 8650 of 1997 in the case of Yunusbhai Husanbhai Ghanchi Vs. District Magistrate dated 15th September, 1999 may profitably be used. In that case, the Court took a view that non-consideration of aspect of cancellation of bail can be termed non-application of mind and that it would vitiate the order of detention. In this view of the matter, the petition deserves to be allowed. The order

impugned deserves to be quashed and set aside.

7. The petition is therefore allowed. The order of detention passed by Police Commissioner, Ahmedabad onon 17.2.1999 in respect of petitioner Smt.Bhartiben Wife of Ramkripal is hereby quashed and set aside. The petitioner be set at liberty forthwith, if not required in any other case. Rule made absolute accordingly. No Costs.

(A.L.Dave, J)

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